Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	FCC 03J-1
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

I. Introduction

The Nebraska Rural Independent Companies (the "Nebraska Companies"),[1] by their attorneys, respectfully submit their comments in the above-captioned proceeding. On November 8, 2002, the Federal Communications Commission ("Commission") requested that the Federal-State Joint Board on Universal Service ("Joint Board") "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled."[2] Specifically, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier ("ETC") is providing services, as well as the Commission's rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. On February 7, 2003 the Joint

[1] Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

[2] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002).

Board issued a Public Notice in order to initiate its review.[3] In that Public Notice, the Joint Board invited public comment on whether these rules continue to fulfill their intended purpose, whether modifications are warranted, and if so, how the rules should be modified. The Nebraska Companies appreciate the opportunity to participate in the Joint Board's review and the process of the Joint Board recommendation to the Commission by replying to comments that have been filed in this proceeding.

II. State of the Marketplace

The Joint Board seeks to establish a complete record on the development of competition in high-cost areas, the effect of the Commission's current policies on such development, and how line growth in high-cost areas may impact the universal service fund.[4] The Nebraska Companies will respond to comments regarding the extent to which wireless technology represents the addition of a complementary service rather than substitution for traditional wireline service in rural and high–cost areas posed by the Joint Board.[5]

CMRS Is Not A Substitute For Wireline Service For Most Consumers.

Several commenters replied to the Joint Board's question relating to the substitution of wireline service with wireless services.[6] The Montana Telephone Association ("MTA")[7] and the Montana Universal Service Task Force[8] state that consumers appear to view wireline

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[3] *See Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (*"Notice"*) (rel. Feb. 7, 2003).

[4] Id. at para. 9.

[5] Id. at para. 14.

[6] Ibid.

[7] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Comments of the Montana Telephone Association (*"Montana Telephone Association Comments"*) (filed May 5, 2003) at p. 2.

[8] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Comments of the Montana Universal Service Task Force (filed May 5, 2003) at p. 27.

and wireless as complementary services. The MTA suggests that there is, however, increasing evidence that consumers are taking advantage of wireless calling plans to replace landline long distance service with wireless long distance service. The Idaho Telephone Association ("ITA") likewise notes that wireline and wireless services are complements, but that consumers appear to be substituting wireless service for their long distance calling.[9]

Western Wireless, on the other hand, attempts to make a case for its claim that Commercial Mobile Radio Service ("CMRS") service is, or will be perceived in the market, as a general substitute for wireline service. Western Wireless cites the recent growth in wireless service and the decline in wireline subscriptions as evidence to support its claim: "One indication of the potential for this substitution is the growth in wireless service itself, as noted in Section A above. Another indication is the reduction in growth and/or decline in wireline subscription."[10] Western Wireless also provides statistics comparing wireless and wireline subscriber growth to trends[11] The Nebraska Companies respectfully suggest that Western Wireless' data and the conclusions that they draw are misleading. The following table contains the data from the Western Wireless comments, as well as other relevant data from Commission data sources:

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[9] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Comments of the Idaho Telephone Association (*"Idaho Telephone Association Comments"*) (filed May 5, 2003) at p. 6.

[10] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Western Wireless Corporation (*"Western Wireless Comments"*) (filed May 5, 2003) at Attachment B, pp. 3-4.

[11] Id. at Attachment C, p. 6, Figure 4.

			(Millions)			
Year End	**Wireless Subscribers**[1]	**Switched Access Lines**[1]	**Switched Access Lines**[2]	**CLEC Lines**[2]	**DSL Lines**[3]	**Cable Modems**[3]
1999	86.0	174.7	181.3	8.2	0.3	1.4
2000	109.5	175.0	177.7	14.8	1.6	3.3
2001	128.4	166.8	172.0	19.6	3.6	7.1

Source: 1 CTIA Wireless and Wireline Industry Comparison Report (August, 2002)
2 FCC Local Telephone Competition Report (December, 2002)
3 FCC High Speed Service for Internet Access (December, 2002)

The first two data columns in the chart show the wireless and wireline subscriber counts used by Western Wireless and obtained from the *CTIA Wireless and Wireline Industry Comparison* report. The Nebraska Companies were not able to obtain a copy of this report, but have included comparable data from relevant Commission reports. The Switched Access Lines shown in the *FCC Local Telephone Competition* report are different from those shown on the CTIA, report, and the change shown from 2000 to 2001 is also significantly different. The allusion made in the Western Wireless comments is that this decline in wireline subscribers is due to the substitution of wireless service for wireline service. However, in addition to general declines in the economy during this period, there were other factors that contributed to this decline in incumbent local exchange carrier ("ILEC") lines. Wireline competitive local exchange carrier ("CLEC") lines grew substantially during this period. In addition, digital subscriber line ("DSL") and cable modems, both of which often contribute to the elimination of second lines, also enjoyed significant growth during this time period. Thus, Western Wireless' suggestion that this data indicates broad substitution of wireless for wireline service is disingenuous, at best.

Western Wireless also cites an unscientific study conducted by Western Wats[12] of 1,000 rural residents that indicates that 50 percent of the respondents stated their wireless

[12] Id. at Attachment C, p. 2

phone had become more important and their landline phone had become less important. The study also indicated that 51 percent of respondents said that wireless service has replaced some or a large percentage of their home landline service. The Nebraska Companies suggest that the Joint Board and the Commission should be suspicious of this data and its implications. On closer examination, the information provided by Western Wireless does not answer the question posed by the Joint Board regarding the substitution of wireline service with CMRS. The survey did not ask CMRS users if they had eliminated their landline service and were now using only CMRS service. Rather, the survey is merely qualitative information measuring opinions and use patterns. Further, the fact that Western Wireless now contradicts their previous and recent statements on this matter should also raise suspicion.[13] It appears that Western Wireless' position on whether wireless service is being used as a substitute for wireline service shifts depending on the nature of the question being asked and the forum in which it is being asked.

The notion that rural customers are substituting wireless service for wireline service in any significant numbers is also contradicted by data compiled by Great Plains Communications, a rural Nebraska telephone company with over 33,000 access lines. Great Plains has been tracking customer disconnect orders for the past two years to determine the reason for customers disconnecting telephone lines, both primary and secondary. This analysis indicated that of over 2,500 lines disconnected over this time period, only 40 lines,

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[13] *See Facilitating the Provision of Spectrum-Based Services,* WT Docket No.02-381, Comments of Western Wireless Corporation (filed Feb. 3, 2003). In response to questions seeking comment on wireless carriers' receipt of universal service support for providing service to consumers that use wireless service as their only phone service posed by the Wireless Telecommunications Bureau, Western Wireless stated at p. 23 that "a large number of consumers use both wireline and wireless. . . ." and that is because consumers use wireless service ". . . as a *complement* to wireline." (emphasis added)

or approximately 1.5 percent of these disconnects were related to a customer substituting wireless for wireline service.

The Nebraska Companies support the more enlightened view of Dr. William R. Gillis, former chairman of the Rural Task Force. Dr. Gillis stated that policy makers need to think in terms of a universal service that provides rural Americans with all of the benefits of modern telecommunications including a network capable of accessing broadband services, mobile wireless, and basic voice telephone.[14] In his testimony, Dr. Gillis states that "mobile wireless and traditional telecommunications are not for the most part competing services and have inappropriately characterized as such . . . we are discussing complementary services, both desired by consumers for different reasons."[15] The Companies believe that this is the proper context to view the question of wireless and wireline services. Therefore, in developing its recommendations to the Commission, the Nebraska Companies urge the Joint Board to view wireline and wireless services as complements, and not direct substitutes, in developing appropriate universal service policy.

III. Methodology For Calculating Support In Competitive Study Areas

The Joint Board seeks comment regarding the methodology for calculating support for ETCs in competitive study areas.[16] The Nebraska Companies will support and rebut comments herein that address the following issues on which the Joint Board is seeking comment: alternative methodologies for calculating support for competitive ETCs; the policy goals of portable support; and whether and how auctions might be utilized to award support.

[14] See testimony of Dr. William R. Gillis, Director, Center to Bridge the Digital Divide before the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation, April 2, 2003.

[15] Ibid.

[16] *See Notice* at para. 15.

<u>A Separate Fund For Wireless CETCs Would Be Appropriate, As It Would Continue To Provide Support For Services Such As Wireless In High-Cost Areas, But Would Not Provide Support Based On ILEC Costs.</u>

The Joint Board seeks comments on alternative methodologies for calculating support for competitive ETCs.[17] Some commenters have suggested that separate funds for wireless CETCs may be appropriate, as wireless CETCs offer a service that is different than wireline service, but may nonetheless require support, especially in rural areas. The comments of Townes Telecommunications et al. suggests that the Commission should determine universal service support separately for wireline and wireless companies and quality of service must be addressed in the support equation.[18] TCA suggests that one possible method of correcting the problem of unlawful levels of support being distributed to wireless carriers is to establish a separate fund. This fund would be used to sustain and expand wireless service in high cost rural areas. TCA notes that under the current rules, wireless carriers merely seek support for their existing customer base and there is no incentive provided by those rules to construct facilities within areas without wireless service.[19] The Rural Independent Competitive Alliance ("RICA") notes that establishing support rules appropriate to the technology and regulatory status of different carriers will allow the Joint Board, the state and the Commission the opportunity to resolve the supported services and ETC issues in a rational

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[17] Id. at para. 18.

[18] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Comments of Townes Telecommunications, Golden West Telecommunications Cooperative, Inc., Penasco Valley Telephone Cooperative, Inc., Santel Communications Cooperative, Inc., and Venture Communications Cooperative (filed May 5, 2003) at p. 7-8.

[19] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Comments of TCA, Inc. (filed May 5, 2003) at p. 3.

manner.[20] RICA indicates that if there is a public interest in providing support to make possible the offering of universally available mobile services at reasonable rates, the support criteria can be developed to achieve that goal.[21]

The Nebraska Companies support the proposition that wireless ETCs should receive support on a different basis than wireline carriers. The current method of providing support to wireless carriers based on ILEC costs has no economic basis and does not recognize the different utility of wireless and wireline services. Further, it is proving to provide windfall revenues to wireless carriers—often several within a service area—without any policy basis for such a development.[22] The Nebraska Companies believe that funding levels for wireless ETCs should be based on the unique cost drivers that affect differences in service levels and capabilities unique to wireless technology. Further, as we will discuss below, wireless carriers should not receive support for the cost of carrier access services that they do not provide.

While Many Commenters Have Suggested That Support Be Based On Each Carriers' Cost, The Nebraska Companies Believe Such A Proposal Is Unworkable.

The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"),[23] the National Telecommunications Cooperative Association ("NTCA"),[24] and the Montana Telephone Association[25] suggest that the current identical

[20] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Rural Independent Competitive Alliance (filed May 5, 2003), at p. 21.

[21] Ibid.

[22] *See*, for example, the *Notice* at footnote 43, explaining a Salomon Smith Barney report on Western Wireless, which indicates that universal service funding received by a wireless ETC is incremental revenue that represents "almost all margin."

[23] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of OPASTCO (*"OPASTCO Comments"*) (filed May 5, 2003), at p. 16.

[24] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of NTCA (filed May 5, 2003), at p. 16.

support rule should be replaced by a method by which CETCs should received support based on their own embedded costs. In contrast, the Cellular Telecommunications & Internet Association ("CTIA")[26] argues that the Commission wisely decided that CETCs should receive the same level of support as the rural LECs in order to foster competition in rural markets. The Idaho Telephone Association[27] has a more logical view of the appropriate level of support to be distributed to CETCs. They suggest that the level of support should reflect fundamental differences in the service being provided. Those differences include service quality, coverage, and specific differences in costs inherent to the technology being utilized.

The Nebraska Companies assert that any system that requires that CETCs receive support based on their embedded costs appears to be impractical. The use of embedded costs implies that the carriers must comply with regulatory accounting and jurisdictional separation rules such as those prescribed by the Commission for subject carriers.[28] The current regulatory accounting rules apply to the wireline network, for example, the rules regarding the types of equipment and categorization of that equipment would be specific to the wireline network. A new set of rules would need to be developed for a wireless network. Furthermore, rules would be needed to separate wireless carriers' universal service offerings from other wireless service offerings, similar to the rules to separate regulated services from non-regulated services for wireline carriers. Even if appropriate rules were developed, enforcement of such a system would be virtually impossible because of the multi-

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[25] *See Montana Telephone Association Comments* at p. 6-7.

[26] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of CTIA (filed May 5, 2003), at p. 6.

[27] *See Idaho Telephone Association Comments* at p. 6-8.
[28] 47 C.F.R. Part 32 and Part 36.

jurisdictional nature of most wireless carriers. Therefore, the Nebraska Companies recommend that the Joint Board consider their proposal presented below for determining universal service support amounts.

A Proposal To Determine Universal Service Support Amounts Based Upon A Proxy Model That Calculates Costs For Both Wireline And Wireless Services Is Unworkable.

Western Wireless suggests that universal service support should be based upon a forward-looking cost methodology for all carriers.[29] Furthermore, Western Wireless suggests that a forward-looking cost proxy model could be constructed that would model the costs of both wireline and wireless carriers.[30] Western Wireless suggests that such a model be used to determine support amounts for a given support area by determining the point at which two cost curves, one for a wireless provider and one for a wireline provider, each serving varying market shares from 100 percent to 0 percent, would intersect.[31] Western Wireless asserts that the point at which the two cost curves intersect "represents the theoretical minimum cost of an exchange and the optimal funding level, **assuming the existence of two competitors**."[32] The Nebraska Companies believe this suggested methodology is flawed in several respects, and urge the Commission not to consider further study of this suggestion.

The Nebraska Companies have asserted that there may be a need to fund both wireline and wireless carriers in rural areas, so that consumers may be able to benefit from the unique utilities of both services.[33] Instead of recognizing that wireline and wireless

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[29] *See Western Wireless Comments* at p. 17.

[30] Id. at Attachment I, p. 10.

[31] Id. at Attachment I, p. 14.

[32] Ibid.

[33] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Nebraska Rural Independent Companies (*"Nebraska Companies Comments"*) (filed May 5, 2003) at p. 12-16.

services are complements, not substitutes, the Western Wireless proposal attempts to treat the two services as perfect substitutes. Obviously, that is not the case. Furthermore, the proposed modeling methodology presents a myriad of problems.

In order to develop a truly representative least cost point, comparable standards of service quality and network availability would need to be developed and adhered to in modeling costs. Currently, wireless networks generally offer less network availability than wireline networks.[34] If the costs for wireless technology are modeled such that network availability is less than in today's wireline network, the costs of wireless technology are likely appear to be less than the costs of wireline service. Even so, modeling costs in this manner would not be providing an "apples to apples" comparison, as wireline and wireless services provide different functionalities. For example, many wireline providers offer broadband capable service, while many wireless networks are not broadband capable, especially in rural areas.

Another shortfall of the modeling methodology is the number of customers or subscriptions to be used as the base demand for modeling purposes. Western Wireless suggests that the modeling process "use all customers."[35] Does this mean that all subscriptions to both wireline and wireless services are counted, or that each potential customer (business and residential) is counted only once? If each business and residence is counted only once, the number of subscriptions will be underrepresented, as many consumers

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[34] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ex Parte Filing of David L. Sieradzki, Counsel for Western Wireless Corp., attachment entitled "HAI Consulting, Inc. Wireless Model, Version 4.0 Documentation Prepared for Western Wireless Corporation" at p. 1, footnote 3, which indicates that the proxy model uses assumptions for a "higher busy hour offered load and a lower blocking probability than *standard mobile service*." (emphasis added)

[35] *See Western Wireless Comments* at Attachment I, p. 14.

subscribe to both wireline and wireless services simultaneously, and many subscribe to multiple wireline and wireless subscriptions. However, if the total number of subscriptions is used, the potential base of demand will be overstated, as the modeling of costs will be computed for a number of subscriptions that will not be demanded for one service, wireline or wireless, alone.

Yet another serious flaw in Western Wireless proposed methodology is that it assumes the existence of two competitors.[36] There are at least three service providers, two wireless and one wireline, in most rural areas of the United States, with many more service providers in urban areas. As OPASTCO notes in their comments "[t]he FCC's Seventh CMRS Competition Report states that rural markets, on average, have slightly more than three CMRS providers."[37] It is a growing trend that more than one wireless provider is seeking ETC status in rural areas.[38] Therefore, the modeling of a market with only two carriers, one wireline and one wireless, is totally unrealistic and likely would understate true network cost.

In summary, the proposed methodology put forth by Western Wireless to determine universal service support amounts fails to recognize the unique characteristics of wireline and wireless service, which makes such services complements instead of substitutes. Furthermore, there are several serious issues that have not been addressed in modeling a

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[36] Ibid.

[37] *See OPASTCO Comments* at p. 4.

[38] *See for example Federal-State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, Memorandum Opinion and Order (Wireline Comp. Bur. rel. Nov. 27, 2002) and *Federal-State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317, Memorandum Opinion and Order (Wireline Comp. Bur. rel. Nov. 27, 2002).

single support amount in a given market for different technologies. Therefore, the Nebraska Companies recommend that the Commission should not pursue further investigation of the single proxy model methodology proposed by Western Wireless to determine universal service support.

Wireless ETCs Should Only Receive Support Based On High-Cost Loop ("HCL") Support Until Such Time As A Wireless ETC Provides Equal Access. Further, The Level Of High-Cost Loop Support Provided To Wireless ETCs Should Be Discounted To Reflect Differences In Service Quality Such As Network Availability And Capability To Provide Access To Broadband Services.

The Commission has determined that certain costs that continue to be assigned to carrier access charges through the Commission's rules,[39] are best recovered through universal service fund ("USF") support elements. Those support elements for rural companies are Local Switching Support ("LSS"), Long Term Support ("LTS"), and Interstate Common Line Support ("ICLS"). The Nebraska Companies argue that in order for these support elements to be appropriate for portability to a competitive ETC, that such carrier must indeed provide wholesale access services to interexchange carriers ("IXCs"). Wireless carriers do not provide access services to IXCs.[40] Wireline carriers and wireless carriers operate under entirely different market structures. Wireline carriers are obligated under federal statute to provide toll dialing parity (equal access),[41] and wireline carriers recover the costs for the use of their local networks through wholesale access charges assessed to IXCs. The IXC provides the retail toll service to the end user. Wireless carriers, on the other hand, purchase

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[39]Costs are assigned to the interstate jurisdiction using rules in 47 C.F.R. Part 36, and such costs are assigned to access elements using rules in 47 C.F.R. Part 69.

[40] In fact, wireless carriers are advocating aggressively against being required to provide equal access in the proceeding to determine the definition of supported services for universal service. See, for example, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Cellular Telecommunications & Internet Association and Comments of Western Wireless Corporation (filed Apr. 14, 2003).

toll on a wholesale basis from IXCs and bundle that toll service in their retail CMRS product packages. At the present time, wireless carriers are not subject to toll dialing parity requirements and they benefit from the buying power associated with aggregating all of their CMRS subscribers' toll traffic and contracting with one long distance carrier to terminate that traffic. No wholesale access services are provided by wireless carriers, therefore, wireless carriers should not be entitled to USF support associated with the cost of carrier access unless they are made subject to toll dialing parity obligations, and through those obligations provide carrier access services to IXCs.

The Nebraska Companies recommend that the Joint Board and the Commission adopt an additional principle under their authority defined in section 254(b)(7) of the 1996 Act[42] that would limit support to carriers only to the services that are actually provided by that carrier. This would protect the public interest, convenience, and necessity by limiting the total size of the support requirement and the potential for windfalls by wireless carriers. The Commission should also correct its rules in a manner that is consistent with this additional principle.[43]

In addition to the fact that they do not provide wholesale access services to IXCs, there is an additional reason why cellular provides should not be provided with LSS. LSS is provided to carriers operating small central office switches, because of the inherently higher per-line costs of operating small switches. Due to the nature of the wireline network, switching of calls is done locally. The modern central office switch is in essence a special

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[41] 47 U.S.C. § 251(b)(3).

[42] 47 U.S.C. § 254(b)(7) reads as follows: "ADDITIONAL PRINCIPLES.—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the Act.

[43] 47 C.F.R. Part 54.

purpose computer, and in the case of a small switch, the per line cost of this common switching equipment is higher than the same switch serving a larger number of lines. The purpose of LSS is to properly compensate wireline carriers for these higher costs. Wireless networks do not have a similar switching architecture. Typically, these carriers aggregate the switching function over a larger geographic area, often including urban markets. As a result, their costs would be lower, and the provision of LSS would be inappropriate.

The Nebraska Companies also suggest that it is not appropriate to provide support based on the HCL fund to wireless carriers that is equivalent to the per line support provided to rural ILECs. As discussed above, CMRS technology does not offer the same level of service quality and network availability and does not have the inherent platform capability to support broadband access to advanced services. Therefore, the Nebraska Companies suggest that the per-line High-Cost loop fund levels should be discounted to reflect the cost drivers associated with those limitations, namely, the lack of a dedicated distribution facility to connect the end user. Higher network availability and the capability to support broadband access to advanced service represent a higher cost and a greater utility, and these service realities should be reflected in the universal service mechanism that is deployed.

The Concept Of Portability Per Se Does Not Require The Payment Of Identical Support Amounts Per Customer To Carriers Offering Different Services.

The Joint Board seeks comment on the policy goals of portable support.[44] Western Wireless asserts that "the relevant question about universal service funding portability in this proceeding is not 'whether,' but 'how'."[45] The Nebraska Companies do not disagree that universal service support funding may be necessary to support the offering of both wireline

[44] *See Notice* at para. 15.

[45] *See Western Wireless Comments* at p. 5.

and wireless services in rural areas.[46] However, the Nebraska Companies do not believe that portability requires that each ETC serving a given support area should receive the same amount of support per customer served, as asserted by Western Wireless.[47]

Western Wireless claims that the ruling by the Court of Appeals for the Fifth Circuit in *Alenco Communications, Inc. et al. v. FCC*,[48] along with prior Commission rulings on universal service matters, make it clear that each ETC serving a given support area should receive the same amount of support per customer served. In *Alenco Communications, Inc. et al. v. FCC*, the petitioners claimed that portability violates the statutory principle of predictability and the statutory command of sufficient funding.[49] The court found that the petitioners could not show that portability violates sufficiency or predictability. The court further noted that the purpose of universal service is to provide "sufficient" funding of the customer's right to adequate telephone service.[50] While the court was asked to address whether the Commission's current universal service portability rules were lawful in this case, the court was not asked to determine whether identical support amounts were required to be paid to all ETCs. In fact, because the sufficiency requirement applies to the customer's right to adequate telephone service, it would appear that the payment of different support amounts to different ETCs would not violate the sufficiency requirement, so long as the support amounts would make comparable telephone service available to consumers.[51]

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[46] *See Nebraska Companies Comments* at p. 12-16.
[47] *See Western Wireless Comments* at p. 6.

[48] *See Alenco Communications, Inc. et al. v. FCC*, 210 F.3d608 (5th Cir2000).

[49] *Alenco* at 618.

[50] *Alenco* at 621.

[51] *See* 47 U.S.C. § 254(b)(3).

Western Wireless also presents the Commission's decision in *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund*, File No. CWD 98-90, as further justification for the payment of an identical amount of universal service support to all ETCs for each customer served.[52] Western Wireless characterized the original Kansas' state universal service funding system, which Western Wireless had challenged in its petition for preemption to the FCC, as providing "substantially greater funding to ILECs than to competitive ETCs."[53] However, the *Kansas Order* indicates that a portion of the Kansas state universal service funding system provided support that "was available to the ILECs - - and only the ILECs."[54] Kansas revised its universal service funding system to make the funding that was only available to ILECs portable prior to the Commission issuing a decision.[55] The Commission therefore found the petition to be rendered moot.[56] However, in the Kansas Order, the Commission discussed its concern regarding programs structured like the original Kansas state universal service funding system in order to provide guidance on universal service issues that may arise in other contexts.[57] The Commission stated that "[i]t appears doubtful that a program which limits eligibility for universal service funding to ILECs would be found competitively

[52] *See Western Wireless Corporation Petition for Preeemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, Memorandum Opinion and Order 15 F.C.C.R. 16227 (*"Kansas Order"*) (rel. Aug. 28, 2000).

[53] *See Western Wireless Comments* at Attachment A, p. 3.

[54] *See Kansas Order* at 16229 (para. 3).

[55] Id. at 16231 (para. 6).

[56] Ibid.

[57] *See Kansas Order* at 16231 (para. 7).

neutral."[58] However, the Commission clearly did not discuss the level of funding provided to each ETC, only its concern that all ETCs should be *eligible* to receive funding.

The Nebraska Companies believe that *Alenco Communications, Inc. v. FCC* and the *Kansas Order* indicate that all ETCs have a right to receive universal service funding, provided that they meet all conditions to receive funding, as discussed later in these comments. However, neither *Alenco Communications, Inc. v. FCC* nor the *Kansas Order* directly addressed the level of funding that CETCs should receive. Therefore, the Nebraska Companies urge the Joint Board to consider the proposal for universal service funding discussed above as a rational alternative to the current system that provides the same amount of support for services with different functionalities and levels of quality.

Using Auctions To Determine Support Amounts Would Not Fulfill Several Universal Service Principles Contained In The Act.

The Joint Board sought comment on whether and how auctions might be utilized to award support.[59] Western Wireless indicates that in 1996, GTE proposed a system of universal service auctions in which multiple bidders could potentially win and simultaneously receive universal service support.[60] Under GTE's proposal, the lowest bidder and all other auction participants submitting bids within a specified percentage range above the lowest bid would qualify.[61] GTE proposed that identical per-line support funding would be disbursed to all winning bidders, in the amount of the highest qualifying bid.[62] Western Wireless suggests that such a process could be modified to allow all designated ETCs to

[58] Id. at 16232 (para. 10).

[59] *See Notice* at para. 20.

[60] *See Western Wireless Comments* at Attachment J, p. 9.

[61] Ibid.
[62] Ibid.

receive the amount of support determined through the auction process, in other words, the auction would determine the amount of support, but would not be used to exclude potential qualifying carriers from receiving support. While this approach would address the concern that only one ETC might receive universal service support, which the Nebraska Companies indicated as a potential problem in their comments,[63] this proposal will not ensure that universal service principles contained in the Act are fulfilled.

The Joint Board asks "[w]hat responsibilities should be imposed on the ETC that receives high-cost support? Should such an ETC be required to assume quality of service obligations?"[64] The Joint Board also asks "[w]hat impact would auctions have on investment by incumbents and competitors in high-cost areas? What sort of measures could be adopted to encourage auction winners, as well as losers, to continue investing in high-cost areas?" The answers to these questions indicate the problems with attempting to use auctions to determine universal service support amounts while also attempting to fulfill universal service principles. The Act indicates that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

> (1) QUALITY AND RATES.—Quality services should be available at just, reasonable, and affordable rates.
> (2) ACCESS TO ADVANCED SERVICES.—Access to advanced telecommunications and information services should be provided in all regions of the Nation.
> (3) ACCESS IN RURAL AND HIGH COST AREAS.—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[65]

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[63] *See Nebraska Companies Comments* at pp. 16-17.

[64] *See Notice* at para. 20.

[65] 47 U.S.C. §§ 254(b)(1), 254(b)(2) and 254(b)(3).

The Nebraska Companies believe that determining the amount of universal service support for a given support area based upon an auction will not ensure the offering of quality services, especially if different technologies, with different quality of service standards, are combined in the same bidding process. As a matter of principle, it is generally less costly to provide service of a lesser quality. If support amounts are fixed based on a bid pertaining to a lower quality service relative to other services that may be offered in the same support area, the support amount may not be sufficient to ensure the offering of higher quality services. This is particularly troubling in light of the fact that there are no minimum quality standards at the federal level for universal service. As aptly stated by the Alaska Telephone Association, an auction system to determine support amounts "encourages a 'race to the bottom' instead of network enhancement."[66]

In such an environment there are no incentives for either auction winners or losers to continue to invest in high-cost areas and maintain a quality network. To the extent that a carrier invests less, especially in the short run, such carrier may experience increased profits. The uncertainty introduced by a support amount that changes with each auction cycle further serves as a deterrent to network investment. Long-term network investment requires reasonable certainty of cost recovery. Without such certainty, carriers will be unwilling to properly maintain and upgrade their networks in order to provide quality and advanced services. This need for reasonable certainty in cost recovery was verified by the Rural Task Force ("RTF") in its recommendation concerning an appropriate universal service support mechanism for rural carriers. The RTF recommended that the universal service support

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[66] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Alaska Telephone Association (filed May 5, 2003) at p. 18.

mechanism it had proposed to the Commission should be implemented for a period of five years.[67] In support of this recommendation, Dr. William R. Gillis, Chair of the RTF, noted that "[w]ith less than a five-year period, investment in rural areas would be stifled, both by ILECs who would be unsure of their investment recovery, and by competitors, who need a stable system to make prudent business decisions relative to entering rural markets."[68]

Western Wireless argues that consumers would "presumably" be willing to pay more for offerings that provide more valuable functionalities, such as mobility or higher data speed.[69] However, without minimum quality standards, the difference in costs between a supported service and services that offer more valuable functionalities may be too great for many consumers, especially in rural areas.[70] In small rural markets, if there is not sufficient demand a service offering may cease to exist, as a sufficient base demand is necessary to cover the costs associated with offering a service. In such a situation, access to advanced telecommunications services such as broadband access may not be offered, or, in cases where it may be offered, the lack of sufficient universal service funding may cause it to be offered at rates in rural areas that are not comparable to rates in urban areas. The Nebraska Companies therefore urge the Joint Board to recommend to the Commission that an auction should not be used as a method to determine universal service support amounts, as such a method would not fulfill universal service principles contained in the Act.

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[67] The Nebraska Companies would note that even five years in not adequate to ensure cost recovery, given that the depreciable lives of most telecommunications investments are more than five years.

[68] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Letter from William R. Gillis, Chair, Rural Task Force, to Commissioner Susan Ness, et al. (filed Dec. 12, 2000).

[69] *See Western Wireless Comments* at Attachment J, p. 9.

[70] For example, Nebraska's 2001 per capita personal income was $33,109 for metropolitan areas, but only $24,059 for non-metropolitan areas. *See* http://www.bea.doc.gov/bea/regional/reis for data.

IV. Process For Designating ETCs

The Joint Board seeks specific comment on ETC designations performed by states pursuant to section 214(e)(2) of the Act.[71] The Nebraska Companies will support and rebut comments herein that address the following issues on which the Joint Board is seeking comment: should the Commission establish permissive federal guidelines for state to use in designating ETCs pursuant to section 214(e)(2); should the Commission provide guidance regarding the factors a state commission's public interest analysis should consider; and the extent to which similar universal service obligations or quality of service obligations are not imposed on incumbent LECs and competitive ETCs.

<u>The Nebraska Companies Support The Institution Of Minimum Quality Of Service Standards To Be Included In The Universal Service Definition. Furthermore, The Commission Should Not Impinge On The States' Authority To Determine The Public Interest.</u>

In their comments, Century Tel,[72] Fred Williamson & Associates,[73] the Texas Statewide Telephone Cooperative,[74] and the Washington Independent Telephone Association[75] recognized the need for compliance with minimum service quality standards as criteria for determination of ETC status. Fred Williamson & Associates suggest that the minimum quality of service standards become part of a public interest test.[76] The

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[71] Id. at para. 34.

[72] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Century Tel (*"Century Tel Comments"*) (filed May 5, 2003) at pp. 20-25.

[73] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Fred Williamson & Associates (*"Fred Williamson & Associates Comments"*) (filed May 5, 2003) at p. 17.

[74] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Texas Statewide Telephone Cooperative (filed May 5, 2003) at pp. 12-14.

[75] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Washington Independent Telephone Association (filed May 5, 2003) at pp. 20-21.

[76] *See Fred Williamson & Associates Comments* at p. 17.

Washington UTC[77] and the Idaho Telephone Association[78] assert there is no need to invoke a set a federal guidelines for the determination of the public interest. The Nebraska Companies agree with the assertion that a minimum set of uniform service quality standards should be put it place, but also agree with the Washington UTC and the Idaho Telephone association that the public interest determination should be left to the states. The Nebraska Companies believe that the best way to reconcile these seemingly conflicting needs is for the Joint Board and the Commission to include such standards as an integral part of the universal service definition. The definition of universal service is of little value unless it defines both the nature and the level of the service to be supported. The Nebraska Companies believe that the Joint Board should open an inquiry with the express purpose of determining minimum service quality standards to be included in the definition of universal service. Once established, it should be left to the states to enforce the federal standards, or implement more stringent standards if the states so choose. States are in the best position to know the needs of their jurisdiction. Furthermore, states should have the authority to retract an ETC's designation if compliance is not verified.

ETCs Should Be Held Accountable To Demonstrate How USF Dollars Are Deployed.

In its comments, Century Tel recommends that commission rules should require each CETC to annually demonstrate that it has used high-cost funds to improve and build out local exchange infrastructure, and to provide covered services throughout the rural ILEC's study area.[79] ICORE argues that state regulatory commissions must have the authority to decertify

[77] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Washington UTC (filed May 5, 2003) at pp. 20-21.

[78] *See Idaho Telephone Association Comments* at p. 12.
[79] *See Century Tel Comments* at p. 4 and pp. 39-40.

any ETC that fails to meet any of the qualifications required by the Commission or the state.[80] The Nebraska Companies suggest that the Joint Board recommend to the Commission the establishment of stronger rules that would require periodic review of each ETC's compliance with evolving supported service definitions. Furthermore, the periodic review should also encompass the requirement to offer service to all consumers in the service area and to maintain and build out local exchange infrastructure. This would also provide state commissions with the opportunity to periodically review compliance with their own unique public interest standards. The Nebraska Companies urge the Joint Board and the Commission to define specific goals and objectives that USF support is designed to achieve through the process of expanding universal service definitions and the addition of key universal service principles. This will provide a framework for states to certify ETC compliance.

Section 332 Of Federal Law Does Not Apply When Wireless Carriers Elect To Become ETCs.

Western Wireless asserts that federal law prohibits states from imposing additional requirements for ETC certification such as equal access requirements, rate regulation, or carrier of last resort requirements.[81] With respect to equal access, Western Wireless is mistaken in their interpretation of federal law. Section 332(c)(8) states that:

> If the Commission determines that subscribers to such service are denied access to the providers of telephone toll service of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of

[80] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of ICORE (filed May 5, 2003) at p. 16.

[81] *See Western Wireless Comments* at Attachment E, p. 4.

telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism.[82]

Clearly this statute provides the Commission with authority to impose toll equal access requirements on CMRS carriers generally or as a condition of ETC certification under the framework of the universal service definition.

A State commission is free to exercise any applicable rule as a condition for ETC status determination as long as those regulations are not inconsistent with the Commission rules to preserve and advance universal service.[83] There are no Commission universal service rules[84] that prohibit the imposition of equal access requirements for determination of ETC certification. The Utah Supreme Court upheld a Utah PSC ruling that stated that ETC status is separate from common carrier status and that section 332(c)(3)(A) does not apply when a common carrier is acting as an ETC.[85] Therefore, the Nebraska Companies recommend that the Joint Board should disregard Western Wireless' assertions that the states cannot impose additional requirements for ETC certification.

V. Conclusion

The Nebraska Companies believe that the appropriate framework in which to examine the debate concerning alternative methodologies for calculating support for competitive ETCs is to begin with one of the fundamental principles upon which the universal service support system is to be based. Section 254(b)(3) of the Act generally states that comparable services should be available at comparable rates in both urban and rural areas. The Nebraska Companies assert that wireline and wireless services are complements,

[82] 47 U.S.C. § 332(c)(8).

[83] 47 U.S.C. § 254(f).

[84] 47 C.F.R. Part 51.

not substitutes. Therefore, it may be appropriate to provide universal service support to both services in order to ensure that the principle in Section 254(b)(3) is fulfilled. Because the services are complements, not substitutes, the current policy framework that attempts to treat the two services as directly competitive should be abandoned.

Given that wireline and wireless service are complements, not substitutes, the Nebraska Companies recommend that the Joint Board should recommend to the Commission that universal service support be calculated in a manner that recognizes the unique functionalities of each service. The Nebraska Companies have suggested that one method of structuring the support mechanism to recognize the differences in wireline and wireless services may be to pay support for universal service mechanisms related to access, that is, LTS, LSS, and ICLS, only to carriers that provide access through dialing parity or equal access obligations. Furthermore, the Nebraska Companies also recommend that HCL support paid to wireless carriers should be discounted from the amount paid to wireline carriers to recognize the differences in network availability and bandwidth provided by the different services.

Finally, with regard to the process for designating ETCs, the Nebraska Companies, along with several other commenters, recognized the need for compliance with minimum service quality standards as criteria for determination of ETC status. The Nebraska Companies believe that the best way to accomplish this task is to include service quality standards as an integral part of the universal service definition. The Nebraska Companies also suggest that the Joint Board should recommend to the Commission stronger rules that would require periodic review of each ETC's compliance with the supported service

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[85] *WWC Holding Col Inc. V. Public Service Commission on Utah, et al.*, 44 P.3d 714, 724 (Utah 2002).

definition, the requirement to offer service to all consumers in the service area, and to maintain and build out local exchange infrastructure.

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Respectfully submitted,

The Nebraska Rural Independent Companies

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Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco Inc.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Company, Inc.,
Hooper Telephone Company,
K&M Telephone Company, Inc.,
Nebcom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
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